



“Protecting and Promoting
New Mexico’s Environment Group”

Office of the State Engineer

Tribal Communication and Collaboration Policy

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I. BACKGROUND

- A. In 2003, Governor Bill Richardson and Tribal Governments in New Mexico signed a *Statement of Policy and Process* (“Statement”) to “establish and promote a relationship of cooperation, coordination, open communication and good will, and [to] work in good faith to amicably and fairly resolve issues and differences.” The Statement “recognizes and respects [tribal] sovereignty” and directs State and Tribal Governments “to respect the principles of government-to-government relations.”
- B. In 2005, Governor Bill Richardson issued Executive Order 2005-004, *Statewide Adoption of Tribal Consultation Plans*. Executive Order 2005-004 expanded on the 2003 Statement by directing 17 State agencies to consult with all of New Mexico’s 22 Indian Nations, Tribes, and Pueblos in adopting tribal consultation plans that address “the agency’s operations that involve interaction with tribal governments, communities, and/or tribal members within New Mexico.”
- C. On March 19, 2009, Governor Bill Richardson signed the New Mexico State – Tribal Collaboration Act (“Act”) into law. The Act directs each state agency to designate a tribal liaison at each state agency, establishes an annual summit with New Mexico tribal leadership, and requires development of cultural competency training for state employees and development of state – tribal communication and collaboration policies for state agencies.
- D. In the fall of 2009, the Governor’s Office established the “Protecting and Promoting New Mexico’s Environment Group” composed of representatives from the New Mexico Energy, Minerals and Natural Resources Department, New Mexico Department of Game and Fish, New Mexico Office of State Engineer, New Mexico Environment Department, and New Mexico Department of Agriculture (“Agency” or “Agencies”). The Group was established to develop an overarching tribal communication and collaboration policy that:
 - a. Promotes effective communication and collaboration between the state agency and New Mexico Indian nations, tribes and pueblos;
 - b. Promotes positive government-to-government relations between the state and New Mexico Indian nations, tribes and pueblos;
 - c. Promotes cultural competency in providing effective services to New Mexico Indian nations, tribes and pueblos; and
 - d. Establishes a method for notifying state agency employees of the purpose and requirements of the tribal communication and collaboration policy.

- E. The Agency submits the Tribal Collaboration and Communication Policy (“Policy”) to the Indian Affairs Department in accordance with the State – Tribal Collaboration Act, NMSA 1978, § 11-18-4 (C) (2009).
- F. The adoption of this Policy does not preclude the Agency from further developing or updating agency-specific implementation plans, or consultation policies.

II. PURPOSE

- A. The purpose of this Policy is to foster, facilitate and strengthen positive government-to-government relations between the Agency and New Mexico’s 22 Indian Nations, Tribes and Pueblos by establishing guidelines for State – Tribal communication and collaboration.

III. DEFINITIONS

- A. The following definitions shall apply in the Policy:
 - 1. Agency or Agencies: New Mexico Environment Department, New Mexico Office of State Engineer, New Mexico Department of Game and Fish, New Mexico Energy, Minerals and Natural Resources Department, and New Mexico Department of Agriculture.
 - 2. Communication: Verbal, electronic or written exchange of information between staff of Agency and Tribal Governments and their officials and staff
 - 3. Collaboration: Collaboration is a process in which two or more parties work together to achieve a common goal. Collaboration may occur between the state and tribes and their respective agencies or departments and may involve other Indian organizations if needed. The purpose of collaboration is to discuss issues openly when they arise and to honor the sovereignty of each other.
 - 4. Consultation: Consultation with Tribal Governments is a unique government to government process. Consultation is an enhanced form of communication that emphasizes trust and respect. It is a shared responsibility that allows the parties to exchange, in an open and free manner, timely and accurate information and opinions for the purpose of mutual understanding. Consultation does not involve matters or issues in litigation.
 - 5. Cultural Competency: Refers to an ability to interact effectively with people of different cultures. Cultural competence comprises four components: (a) awareness of one’s own cultural worldviews, (b) appreciation of cultural differences, (c) knowledge of different cultural practices and worldviews, and (d) honing cross-cultural skills. Developing cultural competence improves one’s ability to understand, communicate with, and effectively interact with people across cultures.

6. Internal Agency Operations/Processes: The Agency has the authority and discretion to designate internal operations and processes that are excluded from this Policy such as personnel matters, budget development, accounting, etc.
7. Programmatic Action: Actions related to programs, bureaus, divisions and offices of the Agency excluding internal operations and processes that are planned or proposed to occur and that are within the areas of communication, collaboration, and consultation identified in this Policy.
8. Tribal Government: The governing structure of a sovereign, federally recognized government of an Indian Nation, Tribe, or Pueblo, within the United States. This Policy is inclusive of all 22 federally recognized Indian Nations, Tribes and Pueblos located in New Mexico.
9. Tribal impact: The impact of state legislation, regulations, policies, and Programmatic Actions on the natural, cultural, and environmental resources of New Mexico's 22 Indian Nations, Tribes, and Pueblos.
10. Tribes: Any of New Mexico's 22 Indian nations, Tribes, and Pueblos.

IV. PRINCIPLES

- A. Recognize and Respect Sovereignty: The recognition and respect of sovereignty is the basis for government-to-government relations and this Policy. State and Tribal Governments are sovereign governments. Sovereignty must be respected and recognized in government-to-government relations. Tribal Governments and State has the inherent authority to govern their own internal affairs. The State of New Mexico and the Agency recognize and acknowledge the trust responsibility of the Federal Government to New Mexico's 22 Indian Nations, Tribes and Pueblos.
- B. Promote Government-to-Government Relations: The Agency shall strive to facilitate discussion with New Mexico's 22 Indian Nations, Tribes and Pueblos, other parties, intergovernmental organizations, commissions and county and local governments to promote government-to-government relations.
- C. Establish Partnership and Coordination: In order to maximize the use of limited funding and human resources, the Agency and New Mexico's 22 Indian Nations, Tribes and Pueblos are encouraged to establish partnerships and coordinate on programmatic activities, training, workshops, and areas of mutual interest or concern.
- D. Promote Mutual Resolution: The Agency shall work in good faith with Tribal Governments to address and mutually resolve concerns. The Agency recognizes that good faith, mutual respect, and trust are fundamental to developing meaningful working relationships.

- E. Utilize Informal Communications: The Agency and Tribal Governments recognize that formal consultation may not be required in all situations or interactions. Staff for the Agency and Tribal Governments may communicate outside the consultation process. These communications do not negate the authority of the Agency and Tribal Governments to request formal consultation.

V. GENERAL PROVISIONS

- A. If a proposed Programmatic Action may impact Tribal cultural, natural, and environmental resources, the Agency shall endeavor to notify Tribal Governments and inquire whether collaboration should occur.
- B. The Agency shall follow applicable Federal and State laws regarding environmental resources located on Federal, State and private lands and shall adhere to applicable tribal laws when invited onto tribal lands.
- C. Subject to budgetary limitations, the New Mexico State Personnel Office shall provide Tribal Cultural Competency and Protocol training to Agency staff. Tribal Governments may provide the Agency with information on Tribal histories, policies, issues, and concerns relating to the Agency with the goal of increasing knowledge and respect for Tribal issues and concerns. Training, training materials and guidelines may be provided by Tribal Governments or may be developed by the Agency in collaboration with Tribal Governments.
- D. Communication
 - 1. Tribal Liaisons: State Tribal Liaisons shall work with Tribal Governments, staff and tribal programs to improve state-tribal interactions, enhance communications and resolve potential issues in improving the delivery of agency services to Tribal Governments.
 - 2. Informal Communications: The Agency recognizes that consultation meetings may not be required in all situations or interactions involving state-tribal relations. Tribal members may communicate with other Agency employees outside the consultation process, including the State Tribal Liaisons and Program Managers to ensure programs and services are delivered to their constituents. While less formal mechanisms of communicating may be more effective at times, this does not negate the State's or the Tribe's ability to request formal consultation on a particular issue or policy.
 - 3. Informal Communications with Other Indian Organizations. The State-Tribal relationship is based on a government-to-government relationship. However other Indian organizations, such as those representing or providing services to New Mexico Indian Nations, Tribes and Pueblos might be adversely affected if excluded from Agency communications. Although these organizations are not considered federally-recognized Tribal governments, nothing in this Policy prevents the Agency from

soliciting recommendations, or otherwise communicating with these groups.

4. To promote effective communication between the Agency and Tribes the Agency shall endeavor to:

a. Communicate with each Indian Nation, Tribe or Pueblo and establish for each:

- i. Preferred methods of communication (formal and informal);
- ii. Issues or areas of Tribal interest relating the Agency programs or activities;
- iii. Appropriate Tribal contact;

b. Conduct face-to-face meetings between the appropriate Agency and Tribal policy and/or technical level staff to increase understandings of any proposed Programmatic Actions in an effort to enhance the development of effective outcomes.

E. Cultural Competency

1. To effectively work in cross-cultural State – Tribal environments, the Agency shall:

a. Participate in ongoing professional development and in-service tribal protocol training provided by the State Personnel Office at all agency levels for building knowledge, awareness and skills in the area of cultural competence.

b. Establish policies to ensure that new staff is provided with training, technical assistance and other supports necessary to work within culturally diverse communities.

c. Provide information to tribal governments and communities. If requested by a tribal government to provide translation and interpretation, the Agency shall coordinate with the tribal government to provide those services to the extent certified interpreters and translators are available, and within the budget of the Agency.

d. Encourage Agency staff to hold meetings with tribal leadership or staff within tribal communities when possible.

F. Collaboration and Consultation

A. Collaboration:

1. Collaboration may be initiated by the Agency requesting collaboration or alerting Tribal Governments as early as possible to allow for sufficient collaboration. Additional specific Agency procedures for collaboration may be developed to assist in the implementation of this Policy. Collaboration shall be held wherever practical, including Tribal Government locations.
2. The Agency and tribes may choose to establish a work group and to develop recommendations. An example of Work Group organization and procedures is attached as Addendum A.

B. Consultation:

1. Consultation may be initiated at the request of the Agency.
2. Consultation may be initiated at the request of Tribal Governors or Presidents, or duly authorized Tribal Officials if deemed appropriate by the Agency.
3. Consultation shall be required only by applicable Federal, State, or Tribal law or regulations.
4. Consultation does not involve matters or issues in litigation.
5. An example of state – tribal consultation procedures is attached as Addendum B.

VI. CONFIDENTIALITY

- A. Confidentiality: The Agency shall exhibit a high degree of respect and sensitivity to protect confidential information provided by Tribal Governments and staff, and shall ensure confidentiality where possible to the extent provided by State and Federal law, e.g., court orders, the New Mexico Inspection of Public Records Act, and the federal Freedom of Information Act.

VII. LIMITATIONS

- A. The Policy shall not create any benefit, substantive or procedural right, or entitlement, enforceable by law, for any Tribal Government or Tribal Official, and State Government or State Official.
- B. The Policy shall not diminish any administrative or legal remedy otherwise available by law to the Agency or a Tribal Government.
- C. The Policy shall not be construed to waive the sovereign immunity of the State of New Mexico or a Tribal Government, or to create a right of action by or against the State of New Mexico or Tribal Government or its officials for failure to comply with this Policy.

- D. The Policy does not prevent the Agency and Tribal Government from entering into Memoranda of Understanding, Intergovernmental Agreements, Joint Powers Agreements, professional service contracts, or other established administrative procedures and practices mandated by Federal, State or Tribal laws or regulations.
- E. The Agency retains the final decision-making authority with respect to actions undertaken by the Agency.

VIII. DISSEMINATION OF THE POLICY

The Agency shall provide access to electronic copies of the Policy to all Agency staff.

IX. AMENDMENTS TO THE POLICY

The Policy shall be reviewed annually and revised as determined by the Agency and as requested by a Tribal Government of New Mexico's 22 Indian Nations, Tribe and Pueblos.

X. EFFECTIVE DATE

The Policy shall become effective upon the date signed by the Agency head.

The Agency hereby adopts the Policy:



State Engineer John D'Antonio, Jr

12/16/09
Date

Addendum A

Sample Procedures for State-Tribal Work Groups

DISCLAIMER: The following illustration serves only as sample procedures for Collaborative State-Tribal Work Groups. The inclusion of this Addendum does not mandate the adoption of these procedures by a collaborative work group. Whether these, or alternative procedures, are adopted remains the sole discretion of the Agency Head and/or as duly-delegated to the Collaborative Work Group.

Work Groups:

- A. Membership on Work Groups – The Agency shall solicit tribal membership on work groups. The Agency shall widely publicize the solicitation with the intent to reach all Tribes, and request the Tribes appoint Tribal members in writing for work groups. As state and Tribal leadership changes, work group membership shall be designated as appropriate.
- B. Meeting Notices – Written notices announcing meetings shall identify the purpose, work group, task force preliminary responsibility, time frame and other specific tasks. All meetings shall be open and widely publicized by the Agency offices and Tribal offices.
- C. Work Group Procedures – The work group may establish procedures to govern the meetings. Such procedures will include, but are not limited to, the following:
 - a. Selection of Tribal and Agency co-chairs to represent the work group and to serve as lead coordinators to ensure the tribal policy is adhered to;
 - b. Defining roles and responsibilities of individual work group members;
 - c. Process for decision-making to arrive at a final product, which may consist of direct participation in work groups or providing timely and written comments from Tribes and the Agency or both;
 - d. Process for determining drafting and dissemination of all final work group products, including data sharing materials subject to policy, procedures and/or Federal or State statutes; and
 - e. Defining an appropriate timeline; and
 - f. Attendance of meetings related to the work group. Members of the work group shall make a good faith effort to attend all meetings.
- D. Work Group Responsibility – The work group will develop final recommendations for the Agency and Tribal review and/or approval.
- E. Work Group Parameters – Agreed parameters shall determine the lines of authority, responsibility and boundaries, definition of issues and delineation of negotiable and non-negotiable points.

- F. Work Group Final Products – Once the work group has created a final draft recommendation or policy, it will initiate the following process to facilitate implementation or additional consultation:
- i. Distribution – The work group will distribute the draft recommendation to the Tribal Governor or President, the Agency Head and Agency tribal liaison for review and comment.
 - ii. Comment – The Tribes and the Agency will return comments to the work group, which will meet in a timely manner to discuss the comments and determine the next course of action.
 - a. If the work group considers the policy to be substantially complete as written, the work group will forward the proposed policy to the group member agency and the Tribes for finalization.
 - b. The work group will record any contrary comments, disagreements and/or dissention in the final report.
 - c. If, based on the comments, the work group determines that the policy should be rewritten; it will reinitiate the consultation process to redraft the policy.
 - d. If the Agency and the Tribes accept the policy as is, the work group will accomplish the final processing of the policy.
- G. Recommendations – The Agency and Tribes should seriously consider any work group final recommendations for actions or implementation.
- H. Implementation – Once the collaboration process is complete and the Agency and Tribes have finalized the recommendation, the Agency and Tribal work group co-chairs shall be responsible for broadly distributing the final recommendation to the Agency departments and Tribal leaders.
- I. Evaluation – At the conclusion of the work group collaboration process, the work group participants shall participate in an evaluation of the work group collaboration process. The evaluation will measure outcomes and make recommendations for improving the work group collaboration process.

Addendum B

Sample Procedures for State-Tribal Consultation

DISCLAIMER: The following illustration serves only as sample procedures for State-Tribal Consultation. The inclusion of this Addendum does not mandate the adoption of these procedures. Whether these, or alternative procedures, are adopted remains the sole discretion of the Agency Head.

Tribal Consultation:

- A. Written Notification: Written notification for consultation by the Agency or Tribal Governments shall:
 1. Identify the proposed Programmatic Action to be consulted upon and provide information relating to the Programmatic Action.
 2. Identify personnel who are authorized to consult on behalf of the Agency or Tribal Government(s).
- B. Delegation: The Agency head may delegate consultation compliance oversight to the Agency Deputy Secretary or other senior Agency staff. A Tribal Governor or President may delegate consultation compliance oversight to a Tribal Official or delegated representatives.
 1. Consultation shall be between the Agency and Tribal Officials or their delegated representatives with authority to negotiate on their behalf. Consultation on a Programmatic Action requiring compliance with applicable Federal, State, or Tribal laws, shall be undertaken and coordinated by the Agency's head, Agency Division Directors and Bureau Chiefs, Agency Office of General Counsel, and selected Agency staff. Group Member State Agency staffs are encouraged to maintain regular informal communication and cooperation with Tribal Governments, Tribal Officials, and Tribal environmental, cultural or natural resources staff.
 2. The Agency and Tribal Governments shall identify and update points of contact on an annual basis.
- C. Consultation Process.
 1. Notification:
 - i. Within 10 days of receipt of a written request for consultation by one or more Tribal Governments delivered to the Agency head, the Agency shall contact the Tribal Government(s) to schedule a Tribal consultation meeting before final agency action.
 - ii. Upon a written invitation for consultation by the Agency head to one or more Tribal Governments:
 2. The Tribal Government(s) shall accept the invitation within 10 days. If no Tribal Government accepts the invitation,

the State shall issue a second written invitation to the Tribal Government(s). If no Tribal Government accepts the second invitation within 10 days, the Agency will conclude that Tribal consultation is not required and may proceed with the proposed Programmatic Action.

2. Consultation:

- i. The Agency shall contact the Tribal Government(s) within 30 days of receipt of a request for consultation to schedule a meeting. The Agency encourages meeting with all interested Tribal Government(s) at one time, but will meet with individual Tribal Governments at the request of the Tribal Governor, President, or other delegated Tribal Official.
- ii. The Tribal Government(s) may submit written comments to the Agency within an agreed upon time frame after the initial meeting. The Tribal Government(s) also may request an additional meeting with the Agency.
- iii. The Agency shall schedule additional meetings as deemed necessary by the Agency or requested by the Tribal Government(s).